

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

TAQEE ZAAKIR,
aka LEIGHTON NEWBLE,

Petitioner,

v.

No. 16-1120

MELVIN BOND,

Respondent.

ORDER DISMISSING CASE WITHOUT PREJUDICE &
DISMISSING OTHER PENDING MOTIONS AS MOOT

On May 20, 2016, Petitioner, Taque Zaaqir, aka Leighton Newble, filed a pro se petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (“Petition”). (Docket Entry (“D.E.”) 1.) Before the Court is Zaaqir’s motion to dismiss the Petition without prejudice. (D.E. 15.) That motion was mailed on November 10, 2016, (D.E. 15-1), and docketed on November 14, 2016 (D.E. 15). Also on November 14, 2016, Respondent filed a motion to dismiss pursuant to Rule 12(b)(6) and/or Rule 56 of the Federal Rules of Civil Procedure. (D.E. 13.)

Pursuant to what is commonly referred to as the “prisoner mailbox rule,” a pro se pleading or motion filed by an incarcerated individual is deemed filed on the date that it is turned over to prison authorities for forwarding to the court clerk. *See Houston v. Lack*, 487 U.S. 266, 275-76 (1988); *Scuba v. Brigano*, 527 F.3d 479, 484 (6th Cir. 2007). In the present case, Zaaqir did not include a certificate of service reflecting the date that he delivered his motion to prison officials. Nonetheless, the latest date it can be deemed filed is November 10, 2016, when it was stamped as outgoing mail by the United States Postal Service. (D.E. 15-1.) Thus, it was filed

before Respondent filed his motion to dismiss and the Petition may be voluntarily dismissed pursuant to Federal Rule of Civil Procedure 41(a)(1), which provides that a plaintiff may dismiss an action without prejudice “by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment” Accordingly, the Petition is DISMISSED without prejudice. Further, Petitioner’s motion for appointment of counsel, (D.E. 12), and Respondent’s motion to dismiss, (D.E. 13), are DISMISSED as moot.

IT IS SO ORDERED this 17th day of November 2016.

s/ J. DANIEL BREEN
CHIEF UNITED STATES DISTRICT JUDGE